MICHAEL RODAK, JR.,C

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-77

DELORES NORWOOD, *et al.*,

Appellants,

v.

D. L. HARRISON, SR., *et al.*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

APPELLANTS' BRIEF

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OPINION BELOW

The opinion of the United States District Court for the Northern District of Mississippi is reported at 340 F. Supp. 1003 (N.D. Miss. 1972).

JURISDICTION

This is an appeal from a final judgment entered by a three-judge district court, convened pursuant to 28 U.S.C. §§ 2281 and 2284, denying a permanent injunction enjoining state officials from enforcing a state

statute having state-wide application. Jurisdiction accordingly vests in this Court under 28 U.S.C. § 1253.

Final judgment was entered on April 18, 1972. Notice of Appeal was filed in the district court on May 16, 1972—within 60 days from the final judgment (28 U.S.C. § 2101(b)).[1] A jurisdictional statement was filed and the case docketed in this Court on July 14, 1972—within 60 days from the filing of the notice of appeal (U. S. Supreme Court Rule 13). October 10, 1972, this Court noted probable jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

This case also involves § 6656 of the Mississippi Code, 1942 (volume 5, pp. 495-96 of the Mississippi Code, 1942, Chap. 152, Laws of 1940), which states:

> Plan.—This act is intended to furnish a plan for the adoption, purchase, distribution, care and use of free textbooks to be loaned to the pupils in all elementary and high schools of Mississippi.
>
> The books herein provided by the board shall be distributed and loaned free of cost to the children of the free public schools of the state, *and all other schools located in the state*, which maintain educational standards equivalent to the standards established by the state department of education for the state schools.

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[1] In accordance with standard practice in three-judge district court cases plaintiffs also perfected an appeal to the United States Court of Appeals for the Fifth Circuit.

Teachers shall permit all pupils in all grades of any public school to carry to their homes, for home study, the free text books loaned to them, and to carry to their homes, for home study, all other regular text books used in the public schools of the state whether they be free text books or not. (Emphasis added.)

QUESTION PRESENTED

Whether Miss. Code, 1942, § 6656 to the extent that it provides for the distribution of state owned textbooks to private racially segregated academies formed for the purpose and/or having the effect of providing white students and faculty with an alternative to public integrated schools, violates the Equal Protection Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

I.

PROCEEDINGS BELOW

January 23, 1970, the United States District Court for the Northern District of Mississippi entered an order requiring the integration of all public schools of Tunica County, Mississippi, no later than February 2, 1970, in accordance with standards established by this Court in *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968), and *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969).[2] Upon the entry of this order the parents of *all* white students of Tunica

[2]The history of public school desegregation in Tunica County is reviewed in *United States v. Tunica County School District*, 323 F. Supp. 1019, 1021-23 (N.D. Miss. 1970).

County withdrew their children from public schools and formed a private academy housed in church facilities. (Petty Deposition, p. 8.) The principal and 17 high school teachers of the Tunica County system resigned in mid-year to assume positions with the new private school. (Isbell Deposition, pp. 16, 28.)

December 4, 1969, the Executive Secretary of the Mississippi Textbook Purchasing Board, appellee herein, had circulated a memorandum to "County and Separate District Superintendents" which stated:

> Subject: Textbooks for Private Schools.
>
> We have many disturbed parents since the Court decisions. Many of them are going to organize private schools, and they are going to need books.
>
> Since all the money has been allotted for this year, it will be necessary for the superintendents to transfer books with the student as he transfers to the private school. . . .
>
> We appreciate your cooperation in this difficult situation. (Snowden Deposition, June 28, 1971, Exhibit1)

As a result of this memorandum the textbooks used by white students fleeing integrated education in Tunica County and throughout the state were transferred from public schools to private segregationist academies in January, 1970. (Floyd Deposition, pp. 16-17, 33)[3]

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[3]The first challenge to the transfer of state textbooks from public to private schools of Tunica County was entered in *United States v. Tunica County Board of Education*, 323 F. Supp. 1019 (N.D. Miss. 1970). There, black public school children challenged the transfer of state textbooks from Tunica public schools to the Tunica Church School which discontinued its program and returned all textbooks to the public schools at the conclusion of the 1969-70 school year. The issue was, in the context of that litigation, moot. 323 F. Supp. at 1028.

(footnote continued)

October 8, 1970, four black students of Tunica County filed this class action to enjoin the Mississippi Textbook Purchasing Board and its Executive Secretary from distributing state-owned textbooks to the Tunica Institute of Learning[4] and all other academies of Mississippi formed in response to the implementation of this Court's *Brown*, *Alexander* and *Green* decisions.[5] Plaintiffs alleged, *inter alia*, that:

> [T]heir right to a racially integrated and otherwise non-discriminatory public school system, vindicated by order of . . . [the district court] dated January 23, 1970 [*United States and Driver v. Tunica County School District*, . . .] and their right to the elimination of state support for racially segregated schools, have been frustrated and/or abridged by the creation of the racially segregated Tunica County Institute of Learning and the policies and practices of defendants as set forth below. . .

(footnote 3 continued)

The instant lawsuit, however, named the Tunica Institute of Learning as the private academy of Tunica County enrolling all white students of the district and receiving state owned textbooks. During the 1970-71 school year that academy held in excess of 2,000 volumes costing the State $7,000. (See Appendix A. hereto, p. 2a).

[4]Tunica County public school officials continued to pay the salaries of the white teachers and the principal who abandoned the public schools in favor of the newly formed church academy. This practice was enjoined and restitution ordered. *United States v. Tunica County School District*, 323 F. Supp. 1019 (N.D. Miss. 1970), affirmed, 440 F.2d 377 (5th Cir. 1971).

[5]*Brown v. Board of Education*, 347 U.S. 483 (1954). (*Brown I*); *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969); *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).

Beginning with the 1964-65 school year—when the first school districts in Mississippi were required to integrate under freedom of choice—and through the present, numerous private schools and academies have been either formed or enlarged, which schools have established as their objective and/or have had the effect of affording the white children of the state of Mississippi racially segregated elementary and secondary schools as an alternative to racially integrated and otherwise non-discriminatory public schools.

The defendants have provided these racially segregated schools and academies and the students attending such schools, . . . textbooks purchased and owned by the State of Mississippi and have thereby provided state aid and encouragement to racially segregated education and have thereby impeded the establishment of racially integrated public schools in violation of plaintiffs' rights assured and protected by the Fourteenth Amendment to the Constitution of the United States.

(A. 20-21)

Appellants prayed for an order enjoining the Mississippi Textbook Purchasing Board from any further distribution of state owned textbooks to segregationist academies and for an order recalling state textbooks which had already been distributed to such institutions. (A. 21-22) After stipulations were filed and depositions taken, appellants refined their prayer for relief: we sought an order withdrawing state textbook aid from 148 specifically named all-white private academies, enrolling 42,000 students, formed or enlarged for the purpose and/or with the effect of providing white students with an alternative

to public integrated education. *Norwood v. Harrison*, 340 F. Supp. at 1011.[6]

[6]There were 202 private schools operating in Mississippi during the 1970-71 school year:

	Number of Schools	Enrollment
Private segregationist Academies receiving State textbooks	107	34,000 (all white)
Private segregationist Academies eligible but not participating in State's program	41	8,000 (all white)
Sub-Totals	148	42,000
Catholic Schools	47	12,100 (9,200 white 2,900 black)
Other	7	1,800 (1,000 white 800 black)
Sub-Totals	54	13,900 (10,200 white 3,700 black)
Total for all private schools:	202	65,900

(*Norwood v. Harrison, supra*, 340 F. Supp. at 1011, A. 40-43)

Appellants did not challenge textbook aid to the Catholic School System of the State because that system has generally not been made available to white students fleeing integrated public schools. In addition, we excluded the 7 academies, referred to above as "Other," because they were either all-black, integrated or serving the needs of abandoned, orphaned or retarded children.

> Beginning with the 1964-65 school year—when the first school districts in Mississippi were required to integrate under freedom of choice—and through the present, numerous private schools and academies have been either formed or enlarged, which schools have established as their objective and/or have had the effect of affording the white children of the state of Mississippi racially segregated elementary and secondary schools as an alternative to racially integrated and otherwise non-discriminatory public schools.
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April 17, 1972, the district court rendered its opinion holding that: (a) plaintiffs had failed to demonstrate that textbook aid was vital to the private schools, i.e., that whites would return to public schools if only textbook aid was withdrawn; moreover, public integrated education was secure since 90% of the student population of the state continued to enroll in public schools; (b) the statute under challenge was enacted in 1940 and was hence free of any specific intent to aid private racially segregated academies; (c) the statute under challenge provides textbook aid to students and not to schools; and the state's duty to educate all of its youth permitted the distribution of textbooks to students attending segregationist academies for the very reasons expressed by this Court in upholding similar aid to parochial schools against a First Amendment challenge, *Board of Education v. Allen*, 392 U.S. 236 (1968); *Everson v. Board of Education*, 330 U.S. 1 (1947).

II.

THE GROWTH OF PRIVATE ACADEMIES AND THEIR IMPACT ON PUBLIC EDUCATION

A. Statewide Perspective.

The district court found that by the commencement of the 1970-71 school year a network of 148 private segregated academies enrolling approximately 42,000 students had been formed in the state to provide white students with an alternative to integrated public schools. *Norwood v. Harrison, supra*, 340 F. Supp. at 1011, and footnote 5 therein. As we demonstrate below the creation and enlargement of these academies occurred simultaneously with major events in the desegregation of public

schools and frustrated the attainment of fully integrated public schools and the promise of *Brown, Green* and *Alexander*.

The decade immediately following *Brown*—1954-1964—was marked by "Massive Resistance" and public schools were operated on an absolutely segregated basis. Accordingly, as late as the 1963-64 school year there was virtually no private segregationist school system in the State.[7]

In 1963, black students in Jackson, Leake County, Biloxi and Clarksdale filed the state's first school desegregation suits.[8] In 1964, these four districts were required to admit black first graders into white schools and the private segregationist academy appeared for the first time. White Citizens' Council School #1 and Southside Academy opened their doors in Jackson. Clarksdale Baptist School began an elementary program for the first time; and St. George Day School, also of Clarksdale, doubled its enrollment and added three grades to its curriculum. The Leake County Academy opened

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[7]During the 1963-64 school year there were 17 private non-Catholic academies enrolling 2,362 students operating in the state. Five enrolled black students only; two were schools for retarded, orphaned or abandoned children; one was a military academy; two were parochial schools now operated on an integrated basis; two operated part-time programs enrolling only 25 students. The five remaining schools enrolled only 722 students. (A. 40-41)

[8]*Evers v. Jackson Municipal Separate School District; Hudson v. Leake County School Board; Mason v. Biloxi Municipal Separate School District*, 328 F.2d 408 (5th Cir. 1964). The early history of school desegregation in Clarksdale is reviewed in *Henry v. Clarksdale Municipal Separate School District*, 409 F.2d 682, 684 (5th Cir. 1969).

with a curriculum limited to first graders.[9] These five schools were the only new or enlarged private academies operating in the state during the 1964-65 school year.[10]

1965-66 witnessed the implementation of the Civil Rights Act of 1964 and the beginning of a concert of effort involving the Department of Justice, Department of Health, Education and Welfare and private litigants to promote integrated public schools. Prodded by *Singleton v. Jackson Municipal Separate School District*, 348 F.2d 729 (5th Cir. 1965), most public school districts in the state integrated at least four grades under freedom of choice during the 1965-66 school year. (Henderson Deposition, Exhibit 9.) And by 1965-66, Mississippi counted 41 private segregationist academies enrolling 3,841 white students.

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[9]The Leake County Academy closed after one year of operation. It then reopened in January, 1970 upon this Court's order in *Alexander*. All of the Academy's 333 students and 13 of its 15 teachers had enrolled or taught in the public schools during the first semester of the 1969-70 school year. The school is housed in an abandoned public school building (Sheppard Deposition, pp. 5, 9-13).

One witness said that the Leake County Academy might have opened during the 1963-64 school year, one year before the public first grade was desegregated under freedom of choice. (Sheppard Deposition, pp. 4-5.) However, the school desegregation suit was by then notorious. See footnote 8, above.

[10]The facts recorded in this paragraph are contained in the following parts of the record: Supplement to Record entered in the district court on August 10, 1971, Chart, *Interdependence of Public School Desegregation and the Formation and Growth of Private Academies;* Wright Deposition, Exhibit One, thereto; Bounds Deposition, Exhibit 10, thereto; Sheppard Deposition, pp. 4-10; Oral Argument Exhibit Two, entered into record by order of the district court, May 15, 1972.

> [D]uring the 1965-66 school year twenty new private schools . . . were added [to the twenty-one] that had been in operation in 1964-65. In each instance the new schools opened in public school districts which either were under court order to desegregate or had submitted voluntary desegregation plans to the United Stated Department of Health, Education and Welfare. *Coffey v. State Educational Finance Commission*, 296 F. Supp. 1389, 1391 (S.D. Miss. 1969).

Green and *Alexander*, implemented in Mississippi during the 1969-70 or 1970-71 school year, signalled the end of freedom of choice and token desegregation; all students in Mississippi public schools were then assigned under "terminal" plans for desegregation. 1969-70 also witnessed the opening of 55 new private academies and the withdrawal of 21,875 white students from public schools. During the 1970-71 school year an additional 11,061 white students withdrew from public schools to enroll in 31 new academies. (Appendix B hereto; A. 42)[11]

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[11] "Voluntary" desegregation, pursuant to directives of the Department of HEW issued under Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d-1), proceeded at approximately the same pace as desegregation mandated by court order. According to Dr. Lloyd Henderson, Director, Education Division, Office for Civil Rights, the first set of regulations promulgated upon the passage of the Civil Rights Act of 1964 were distributed to all school districts in the Nation during the 1964-65 school year. The first guidelines, requiring the desegregation of several grades under freedom of choice, were entered in April, 1965. In March, 1968, immediately prior to this Court's *Green, supra*, decision, HEW promulgated guidelines requiring the formulation of plans which achieved desegregation; freedom of choice was thereafter unacceptable (Henderson Deposition, pp. 9-10, 20-22, Exhibit 9 thereto).

In summary, there were two major thrusts in the history of public school desegregation in the state of Mississippi. The first occurred in 1965 when freedom of choice plans for four grades were implemented in most school districts. The second occurred in September and December, 1969, or by September, 1970, upon the implementation of *Green* and *Alexander*. And the record shows that virtually all of the 148 segregationist academies of the State opened or substantially expanded their enrollment or curriculum concurrently with these two major events in public school desegregation.[12] (A. 42; Appendix B, hereto.)

In almost all cases the private segregationist academies were opened without any meaningful planning and on the "thinnest financial basis." *Coffey v. State Educational Finance Commission*, 296 F. Supp. 1389, 1392 (S.D. Miss. 1969). No less than 19 were opened in obsolete and abandoned public school buildings; an additional 26 were opened in church facilities intended for Sunday School purposes only; seven academies were opened in private homes or in buildings that were not constructed to house educational facilities. Of the approximately 100 academies for which information is available through deposition, only four opened in newly constructed facilities designed to house an educational program. (A. 44-49) Many of the schools operated without any formal

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[12]The Jackson Municipal Separate School District was the only public school district in the state required to enter substantial changes in its plan of pupil assignment upon this Court's decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

budget and a few depended upon contributions rather than tuition.[13]

Virtually all of the academies obtained the majority of their teachers and administrators from the public school systems. Virtually all rely upon opposition to desegregation of public schools and "white flight" for their survival.

B. Impact of Private Academies on Public School Desegregation in Specific School Districts.

Although the district court found that 90% of the state's school population continues to attend public schools it carefully refrained from any specific finding that private academies have not undermined public integrated education. In fact, the state-wide retention statistic of 90% depends upon the inclusion of many school districts which have only a token number of black students. In the entire "gulf coast" of Mississippi and several of the northernmost school districts of the state, for example, there has been less resistance to public school desegregation.[14] But in districts where public

[13]See, for example, Minor Depositon, p. 16; Wilson Deposition, pp. 10, 13. There were a few private schools which were well organized and financed but they were exceptions. For an example of a segregationist academy with a new physical plant and a substantial budget, see Deposition of Dillon, Administrator of Pillow Academy of Greenwood, Mississippi.

[14]Indeed, the record shows that such districts were generally desegregated without litigation and at least one year in advance of compliance in other parts of the state. Biloxi Municipal Separate, one of the districts in the original school desegregation cases of 1963-64, is 85% white and without any private academy. It desegregated all twelve grades under freedom of choice by the 1966-67 school year although it could have easily obtained a stay until the 1967-68 school year. (Henderson Deposition, Exhibit 11.)

officials have provided no leadership for desegregation and blacks constitute a larger percentage of the student population, the implementation of freedom of choice or terminal plans of pupil assignment triggered the decimation of the white public school enrollment and the resegregation of public schools.

The following desegregation histories of specific school districts illustrate the pattern which emerged upon desegregation in *all* school districts wherein blacks constitute a substantial segment of the student enrollment.

1. *Holmes County School District*[15]

In September, 1965, the United States District Court for the Southern District of Mississippi ordered Holmes County to desegregate grades 1-4 under freedom of choice. Concurrently three private academies (Central Holmes Academy, Cruger-Tchula Academy, East Holmes Academy), limited to grades 1-4 or 1-6 and enrolling approximately 450 students, were opened. By the close of the 1967-68 school year, when the Holmes County system was desegregated under freedom of choice for all twelve grades, the private schools had expanded their program to twelve grades and their combined enrollment to 650 white students.

Holmes County desegregated its schools under a terminal plan in September, 1970.[16] At that moment one

[15] The interdependence of public school desegregation and the formation and growth of private academies in Holmes County was discussed in *Coffey v. State Educational Finance Commission*, 296 F. Supp. 1389, 1391, n. 7 (S.D. Miss. 1969), and *Green v. Kennedy*, 309 F. Supp. 1127, 1133 (D.C. 1970).

[16] Holmes County was one of three districts consolidated under the *Alexander* caption which was given until September 1970 to implement a "terminal" plan.

additional private school opened in the county (Four County Academy) and all but a handfull of white students formerly enrolled in the county's public schools withdrew to attend private segregationist academies. Holmes County presently has two school systems: one public, staffed and attended by blacks; the other private, and staffed and attended by whites who abandoned the public schools upon this Court's mandate in *Alexander*. The appellees treat both school systems as equals under the state's textbook program. (Henderson Deposition, Exhibits 9 & 10; Chart, Interdependence of Public School Desegreation and the Formation & Growth of Private Academies.)

2 *Canton Municipal Separate School District*

The Canton Academy was opened in September, 1965 concurrently with the implementation of a freedom of choice plan for grades 1-4 in the public school system. At the close of the freedom of choice stage of desegregation (1968-69), the Canton Academy enrolled 140 students in curriculum limited to grades 1-8. On January 19, 1970, at the precise moment public schools opened under the terminal plan of pupil assignment mandated by this Court in *Alexander*, the Canton Academy expanded to serve grades 1-12. Its enrollment surged to 1,322, or virtually the entire white student body of the Canton Municipal Separate School District. At the same moment, the academy was moved into an abandoned tent factory with a staff of 20 white teachers who had left the public schools and with textbooks supplied by appellees herein. (The experience of the Tunica County system, wherein named plaintiffs attend school, was identical to that of Canton and Holmes County; *supra*, pp. 3-5).

3. *Jackson Municipal Separate School District*

Prior to the 1964-65 school year Jackson and the surrounding Hinds County counted only three white private academies.[17] All were limited to the elementary grades and their combined enrollment totaled 411. The 1964-65 school year witnessed the desegregation of grade one under freedom of choice and White Citizen's Council School #1 and Southside Academy opened as small elementary schools serving grades 1-4. In September, 1965, Jackson and Hinds County desegregated four grades under freedom of choice and announced that all twelve grades would be so desegregated by 1967-68. During the same month White Citizen's Council #1 expanded its program to all twelve grades and increased its enrollment from 25 to 103 students while Southwest Academy and First Presbyterian Day School opened for the first time. When all twelve grades of the public system had been desegregated in 1967-68, there were nine segregationist academies enrolling 1,250 students operating throughout Jackson and Hinds County.

Terminal plans of pupil assignment were implemented in Jackson and Hinds County in January and September, 1970. In September, 1969, the White Citizen's Council operated three schools enrolling 449 students. In January, 1970, enrollment at Council Schools rose to 2,920 and other groups opened three new academies. In September, 1970, when further changes in the plans of pupil assignment were implemented, the White Citizen's Council opened three new academies while other private groups opened two more. By the 1970-71 school year

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[17]St. Andrews Episcopal (integrated), Jackson Academy (opened in 1959) and Jackson Christian. (A. 40-41)

there were *at least* 18 private academies[18] enrolling over 10,000 students operating in the Jackson-Hinds County area.[19] Jackson public school officials recently explained the impact of private academies upon their system to the court:

> For this pattern is emerging: the Courts will attempt to achieve a percentage result on the basis of projected enrollments; these enrollments will be rendered inaccurate by continued loss of white students. . . .
>
> It is an undeniable fact that desegregation cannot be accomplished without the presence of white students in the public schools. Surely it is not absolutely necessary for a community to watch more than 40% of its white students leave the public schools [to attend private academies] in the space of one year. Enrollment of white students in the system was 20,966 in September, 1969 and 12,095 in September, 1970.[20]

4. *Amite County*

Amite County was one of the school districts consolidated in *Alexander v. Holmes County Board of Education, supra.* In January, 1970, upon remand from this Court, two private schools, the Amite County School Corporation and the Pine Hills Academy opened with

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[18]Examples of Jackson-Hinds academies receiving textbooks are: Woodland Hills Baptist, Terry, Bearss, Flowood.

[19]These 1970-71 statistics are estimates accepted by the district court.

[20] *Jackson Municipal Seperate School District v. Derek Jerome Singleton, cert. denied,* 402 U.S. 944 (1971); Petition for Writ of Certiorari, pp. 29-30.

enrollments of 597 and 426 white students respectively–virtually the entire white student population of the school district. (Henderson Deposition, Exhibit 9; Chart, Interdependence of Public School Desegregation and Formation and Growth of Private Academies; Nowell Deposition, pp. 5-6; Horne Deposition, p. 5.) The Amite County Private School houses grade one in the local Mormon Church, grades two and three in the Methodist and Presbyterian Churches, grades four and five in the "Old Baptist Parsonage," and grades seven through 12 in the Baptist Church.

5. *Indianola Municipal Separate School District*

Indianola Academy, serving grades 1-2 and enrolling 79 pupils, opened in September, 1965 concurrently with integration of grades 1-4 of the public schools under freedom of choice. As additional grades of the public schools were desegregated the academy added grades to its curriculum and students to its rolls so that by September, 1969, it housed 578 students in grades 1-12.

During the first semester of the 1969-70 school year the public school district enrolled 991 white students. However, in February, 1970, the district was required to implement a terminal plan of pupil assignment pursuant to *Green* and *Alexander*; and at that precise moment *all* white students and 30 white teachers of the district withdrew to the security of the segregated Indianola Academy. Accordingly, the Indianola Academy's enrollment surged from 578 white students in December, 1969 to 1,504 such students by February 9, 1970. (Cain Deposition, pp. 5, 9; Floyd Deposition, p. 13; Henderson Deposition, Exhibit 9; *Chart*, Interdependence of Public School Desegregation and the Growth of Private Academies.)

6. *Grenada Municipal Separate School District*

The failure of HEW to obtain voluntary desegregation of the Grenada public schools during the 1965-66 and 1966-67 school year resulted in the termination of all federal financial support for this district as of September 22, 1966. However, a court order was subsequently entered requiring freedom of choice desegregation for grades 1-12 effective September, 1967. Enter the Kirk Academy, in September, 1967, serving grades 1-12 and enrolling 133 students. This academy grew to an enrollment of 412 white students by September of 1969, to 511 by February of 1970, and to 639 by September, 1970.

Effective March 1, 1970, the public school district was required to implement a terminal plan of pupil assignment. On the same day a second private academy, Grenada Lake Academy, opened in an abandoned public school building for 180 white students formerly enrolled in Grenada public schools. (Jaudon Deposition, pp. 3, 5.)

The histories reviewed above are not exceptional. The pattern—public school desegregation followed by the withdrawal of a substantial number of white students to private academies and the resegregation of public schools—was repeated in school district after school district throughout the state.

III.

THE STATE'S TEXTBOOK PROGRAM

A. The Program Generally

Sections 6634-6659.5 of the Miss. Code of 1942 (Appendix B, Jurisdictional Statement) provide the framework for the selection, purchase and distribution of

textbooks used in the state's schools.[21] The laws were enacted in 1940 and amended, insignificantly, in 1942, 1944, 1946, 1960 and 1966. Prior to the initiation of the free textbook program, parents were required to purchase textbooks (§6511). Initially the Act provided textbooks for the elementary curriculum only; in 1942, the legislature extended the program to high school grades (§6658).

Sections 6634 and 6641 establish the Mississippi Textbook Purchasing Board and assign to that agency plenary authority over the state's multi-faceted program. Board members are the Governor, the State Superintendent of Education, and three others—who must have served 5 years in public schools of the State—appointed by the Governor for terms of four years. The Board employs an Executive Secretary who serves as full-time administrator. All members of the Board and the Executive Secretary are appellees herein.

Textbooks may only be purchased "for use in those courses set up in the state course of study adopted by the State Board of Education, or courses established by special acts of the legislature" (§6646). For each such course of study there is a "rating committee" consisting of educators, and other "persons competent in the appraisal of books" appointed by the Governor and State Superintendent of Education (§6641(d)). No textbook may be adopted or purchased by the appellees unless it is first approved by the responsible rating committee.

Once approved, textbooks are purchased under contracts between appellees and publishers at a price

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[21] The following nine states provide free textbooks to private schools: California, Connecticut, Louisiana, Mississippi, Nebraska, New Jersey, New Mexico, New York, Rhode Island.

"not . . . higher than the lowest prices at which the same books are being sold elsewhere in the United States" (§6646(1)). The publishers are required to "maintain a depository at a place within Mississippi to be named by the Board [Jackson] where a stock of books sufficient to meet all reasonable and immediate demands [is]kept" (§6641(f)).

Appellees send to each school district (and now each private school)[22] requisition forms which list all textbooks available free through the state. The school district or private school completes the requisition form and returns it to the Purchasing Board where it is

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[22]Prior to 1970 each County Superintendent of Education was required to requisition textbooks for all schools, *public and private*, geographically located within his county. The requisition was then approved by the Textbook Purchasing Board and thereafter shipment was made by the School Book Depository directly to the consignee specified by the County Superintendent of Education.

In 1970 Congress enacted the Emergency School Assistance Act appropriating funds to aid school districts converting to unitary systems. The act made it unlawful for any recipient to "engage . . . in the gift, lease or sale of real or personal property or services to a non-public elementary or secondary school or school system practicing discrimination on the basis of race, color or national origin." P.L. 91-381, 84 Stat. 806, U.S. Code Congressional and Administrative News, September 5, 1970, pp. 3318-3319. Public school officials wishing to participate in this federal program were forced to disassociate themselves from the private segregationist academies. As a result, the Textbook Board, in 1970, established new distribution regulations which eliminated County Superintendents as conduits for the distribution of textbooks to private academies. The distribution regulations are reproduced in the district court's opinion, footnote 2, Appendix A, pp. 5a-6a, Jurisdictional Statement. *Norwood v. Harrison*, 340 F.Supp. at 1006.

reviewed by the Executive Secretary. After approval, the form is sent to the Textbook Depository in Jackson which fills the order and ships the textbooks directly to the school district or private school. All shipping charges are billed to the Textbook Purchasing Board (§§6641(f)).

B. The Extent of Textbook Aid to Private Racially Segregated Academies.

Appendix A hereto lists the 107 academies which receive textbooks from the State of Mississippi and which were found by the district court to have been "formed throughout the state since the inception of public school desegregation."

During the 1970-71 school year these academies enrolled approximately 34,000 students and held 175,000 volumes costing the state of Mississippi approximately $490,000. The annual per pupil expenditure for new or replacement textbooks approximates $6.00, which will result in an annual recurring state expenditure for these academies of approximately $207,000. The total expenditure for textbooks by the appellee board for the 1970-71 school year was $2,819,070 (Snowden Deposition, Exhibit 12).

The district court found that there are 8,000 students enrolled in an additional 41 private segregationist academies which do not, at this time, participate in the state's program. Accordingly, an additional $120,000 in

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[23]There is, of course, an additional recurring and significant expenditure by the state for the shipment of textbooks from Jackson to private schools (§6641(1)(f), Appendix B, Jurisdictional Statement).

initial inventories and $50,000.00 annually thereafter is available to private segregationist academies.[24]

SUMMARY OF ARGUMENT

The provision of state owned textbooks to the private segregated academies of Mississippi is in conflict with appellee's affirmative duty to promote racially integrated public schools and constitutes significant state aid to racial segregation in violation of the Equal Protection Clause. Neither the absence of a specific intent by the legislature to aid the segregationist academies nor the absence of proof that textbook aid is vital to such academies relieves the state of its Equal Protection obligation not to support segregation.

The lower court's reliance upon the distinction between aid to the student and aid to the school, recognized by this Court in First Amendment cases, was improper because the standards for reviewing state aid in the context of Fourteenth Amendment and First Amendment challenges differ substantially.

ARGUMENT

The decision of the court below upholds the action of the State of Mississippi in providing financial assistance to buy textbooks for pupils attending almost 150 racially segregated private schools which were formed to promote evasion of public school desegregation in the State. The court below held inapplicable prior precedents striking

[24]The Executive Secretary testified that the program was not administered strictly on a per pupil allotment basis. Rather, they sought to provide all textbooks requested and a school could exceed its allotment by merely filing a supplemental requisition.

down as unconstitutional other forms of state aid to these same segregationist academies. It upheld the supplying of textbooks, bought with tax money and distributed by state officials to these segregationist institutions, on the grounds that the state acted under a statute which had no racial motive, that the textbook aid was not essential to continued operation of the segregationist academies, and that similar aid has been held consistent with the Establishment of Religion Clause of the First Amendment.

We believe that the first ground is legally insufficient. The second ground is both incorrect and legally irrelevant because the Constitution forbids all public support of school segregation. *Cooper v. Aaron*, 358 U.S. 1, 19 (1958). The third ground relating to the Establishment Clause is not decisive of racial discrimination issues under the Equal Protection Clause.[25]

The State of Mississippi and all of its agencies must be guided by their "affirmative" and continuing duty to remedy and undo the effects of past racial discrimination and convert school systems from dual to unitary operation. The provision of free textbooks to academies which drain public schools of white students and faculty and which thereby frustrate the attainment of fully integrated public schools is inconsistent with this paramount duty.

In *Green v. County School Board of New Kent County*, 391 U.S. 430, 437-38, the Court was confronted

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[25] Relying on Judge Coleman's opinion in this case, a district court in Louisiana has approved state textbook *and transportation* aid for the segregationist academies of that state. *Jo Ann Grgham v. Evangeline Parish School Board*, Civil Action No. 11053, W.D. La., July 28, 1972, *appeal pending*, 5th Cir. No. 72-3033.

with the very argument relied upon by the court below. There the defendant school board asserted that its only duty under the Equal Protection Clause was to adopt a neutral stance and permit "every student regardless of race . . . [to] 'freely' choose the school he will attend." The Court held that the state could not remedy its long history of support and encouragement for racial segregation by standing neutrally aside. Rather, state agencies were charged with an "affirmative" duty to take whatever steps might be necessary to convert to a unitary system.[26]

This mandate which commands appellees to align themselves unequivocally with public integrated education was recently imposed upon the federal government in *Green v. Kennedy*, 309 F.Supp. 1127 (D. D.C. 1970), *appeal dismissed for want of jurisdiction, sub nom. Cannon v. Green*, 398 U.S. 956 (1970); and see *Green v. Connally*, 330 F.Supp. 1150 (D. D.C. 1971), *affirmed sub nom. Coit v. Green*, 404 U.S. 997 (1971).[27] There

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[26]In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the Court again relying upon the state's duty to formulate a meaningful remedy for past policies and practices of segregation, upheld the use of a variety of techniques aimed at uprooting an entrenched dual system. In *North Carolina Board of Education v. Swann*, 402 U.S. 43 (1971), a statute tending to interfere with the formulation of a remedy for racial segregation was held unconstitutional.

See also *United States v. Jefferson County Board of Education*, 372 F.2d 836, 869, *affirmed en banc*, 380 F.2d 385 (5th Cir. 1967);

"The only adequate redress for a previously overt system-wide policy of segregation directed against Negroes as a collective entity is a system-wide policy of integration." (Emphasis in original)

[27]See also *Adams v. Richardson*, ___ F. Supp. ___ (D. D.C. 1972).

the Court was confronted with mere indirect aid to private academies and with a neutral statute enacted without any discriminatory motive. The Court held on motion for preliminary injunction—[28]that donations to segregationist academies of Mississippi could not be offset against income as charitable contributions for federal income tax purposes because:

> Where there is a showing, as here, that a dual system of segregated schools was established and maintained in the past either under State mandate or with substantial help from State involvement and support, the State and the school districts are under a present, continuing and affirmative duty to establish a "unitary, non-racial system of public education * * * a system without a 'white' school and a 'Negro' school, but just schools." * * * The Federal Government is not constitutionally free to frustrate the only constitutionally permissible state policy, of a unitary school system, by providing government support for endeavors to continue under private auspices the kind of racially segregated dual system that the state formerly supported. (*Green v. Kennedy*, 309 F.Supp. 1127 at 1137) (Emphasis added).

The affirmative duty principle of *Green, supra,* underlies the recent decisions of this Court holding that the constitutionality of a state policy in the context of dual school systems is measured by "whether it hinders or furthers the process of school desegregation." *Wright v. City of Emporia,* 407 U.S. 451 (1972). The same affirmative duty principle underlies the decisions of this Court holding unconstitutional legislation providing

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[28]The final decision reached the same result on statutory rather than constitutional grounds, but the decision has obvious strong constitutional overtones. See *Coit v. Green, supra.*

tuition grants for students attending private segregated academies. *Brown v. South Carolina Board of Education*, 296 F.Supp. 199 (D. S.C. 1968), *affirmed per curiam*, 393 U.S. 222 (1968); *Poindexter v. Louisiana Finance Commission*, 275 F.Supp. 833 (E.D. La. 1967), *affirmed per curiam*, 389 U.S. 571 (1968). See *Wallace v. United States*, 389 U.S. 215 (1967), *affirming Lee v. Macon County Board of Education*, 267 F.Supp. 458, 475 (M.D. Ala. 1967). And relying entirely upon this Court's decisions in *Brown* and *Poindexter*, a district court stated the rule of law in *Griffin v. State Board of Education*, 296 F.Supp. 1178, 1181 (E.D. Va. 1969):

> "[T]he validity of a tuition plan is to be tried on a severer issue: whether the arrangement in *any* measure, no matter how slight, contributes to or permits continuance of segregated public school education.
>
> * * * * *
>
> To repeat, our translation of the imprimatur placed upon *Poindexter* by the final authority is that any assist *whatever* by the State towards provision of a racially segregated education, exceeds the pale of tolerance demarked by the Constitution. In our judgment, it follows that neither motive nor purpose is an indispensable element of the breach. The *effect* of the state's contribution is a sufficient determinant. . . ." (Emphasis in original)

Under this test the Court held that the Virginia statutes were void:

> Indisputably, the State supplies the money; it comes from the public treasury; it goes to individual residents who may expend it for a segregated classroom. Thus, the Virginia payments are made available to help in giving life to an educational forum decried by the Federal Constitution. . . .

> An absolute and unequivocal prohibition is the logical effectuation of the intendment flowing from the recent rulings of the Supreme Court.... (*Griffin supra*, at 1181)

The courts have similarly outlawed a variety of other forms of public aid to private racially segregated schools. See *Wright v. City of Brighton*, 441 F.2d 447 (5th Cir.), *cert. denied sub nom. Hoover Academy, Inc. v. Wright*, 404 U.S. 915 (1971); *Aaron v. Cooper*, 261 F.2d 97 (8th Cir. 1958); *United States v. Hinds County School Board*, 433 F.2d 598 (5th Cir. 1969). *Accord: Blackwell v. Anguilla Line Consolidated School Dist.*, No. 28030 (5th Cir., Nov. 24, 1969) ("No abandoned school facility under this plan, if any, shall be used for private school purposes"); *United States v. Covington County School Dist.*, No. 28030 (5th Cir., Dec. 17, 1969) ("It is further ordered that the Lincoln Elementary School facility shall not be used, leased, or sold for private school purposes"); *Anderson v. Canton Municipal Separate School Dist. & Madison County School Dist.*, No. 28030 (5th Cir., Dec. 22, 1969) (rule to show cause why injunction should not issue); *Lemon v. Bossier Parish School Board*, Civ. No. 10,687 (W.D. La., Sept. 25, 1970) (granting injunction against use of public school athletic field for game between two private schools; field had been leased by Lions Club, sponsor of game); *Taylor v. Coahoma County School District*, 345 F.Supp. 891 (N.D. Miss. 1972); *Gilmore v. City of Montgomery*, 337 F.Supp. 22 (M.D. Ala. 1972).

The proper inquiry, then, is whether state textbook aid "contributes to" or "furthers" (*Griffin, supra, Emporia, supra*) public school segregation. The question almost answers itself: textbook aid enables private segregationist academies operating on the "thinnest

financial basis" (*Coffey, supra,* 296 F.Supp. 1389, 1392 (S.D. Miss. 1969)) to avoid expending sums for a vital aspect of their educational programs; it obviously aids the segregationist schemes to have textbooks selected, purchased and distributed by the State. And it places the State's "power, property and prestige behind the . . . discrimination," (*Burton v. Wilmington Parking Authority,* 365 U.S. 715, 725 (1961)), thereby frustrating the paramount objective of the Fourteenth Amendment.

In the face of these authorities the district court has held that, to prevail, plaintiffs must prove textbook aid vital to segregationist academies, *i.e.*, that whites would return to public schools if only textbooks were withdrawn. *Norwood v. Harrison,* 340 F.Supp. at 1013. However, in neither the tuition grant nor tax exemption case was there any evidence that whites would return to public schools if only such benefits were terminated. In fact, segregationist academies persisted *after* tuition grants and tax exemptions were withdrawn. Accordingly, the district court's standard would argue for the restoration of tuition grants and tax benefits to the academies of Mississippi. The absurdity of this result and the authorities cited above are sufficient answer to the test advanced by the district court.

Moreover, the Equal Protection inquiry is *not* whether the state by withdrawing aid can destroy private racial discrimination; rather the question is whether the state is lending its support to racial discrimination "through any arrangement, management, funds or property." *Cooper v. Aaron,* 358 U.S. 1, 19 (1958). *Palmer v. Thompson,* 403 U.S. 217 (1971); *Anderson v. Martin,* 375 U.S. 399 (1964); *Reitman v. Mulkey,* 387 U.S. 369 (1967); *Burton v. Wilmington Parking Authority, supra; Shelley v. Kraemer,* 334 U.S. 1 (1948). Judge Bazelon phrased it thusly in holding tax benefits to segregated fraternal orders unconstitutional:

> We have no illusion that our holding today will put an end to racial discrimination or significantly dismantle the social and economic barriers that may be more subtle, but are surely no less destructive. Individuals may retain their own beliefs, however odious or offensive. But the Supreme Court has declared that the Constitution forbids the Government from supporting and encouraging such beliefs. By eliminating one more of the "nonobvious involvements of the State in private conduct" we obey the Court's command to quarantine racism. (Citing *Burton, supra.*) *McGlotten v. Connally*, 338 F.Supp. 448, 462 (D. D.C. 1972).

The district court also upheld Mississippi's textbook statute on the grounds that the statute is neutral on its face and devoid of any purpose to aid private segregationist academies. But this Court has made it abundantly clear that state legislation and policy, especially in the field of education and in the context of a state converting from dual to unitary operation, must be measured by its effect rather than its purpose:

> [A]n inquiry into the "dominant" motivation of school authorities is as irrelevant as it is fruitless. The mandate of *Brown II* was to desegregate schools and we have said that "the measure of any desegregation plan is its effectiveness." . . . Thus, we have focused upon the effect—not the purpose or motivation—of a school board's action in determining whether it is a permissible method of dismantling a dual system. The existence of a permissible purpose cannot sustain an action that has an impermissible effect. *Wright v. Council of the City of Emporia, supra*, 407 U.S. 451 (1972). (Citing *Palmer, supra*, 403 U.S. at 225.)

The district court's holding, that aid to students (as opposed to schools) shields the state from an Equal Protection challenge, is transparent. "[I]t is the right of the State . . . to make, and not the right of the pupils, parents or schools to take" the textbook grants which is at issue. *Griffin v. State Board of Education*, 239 F.Supp. 560, 563 (E.D. Va. 1965). All of the tuition grant legislation provided grants directly to students and not to schools and all such legislation has been held unconstitutional by this Court. Although the distinction between aid to a student and aid to a school may be relevant in the context of aid to parochial education and the First Amendment, it finds no support in the Equal Protection decisions of this Court.

This Court has never confused or found interchangeable equal protection and establishment of religion standards. Thus, a "federal construction grant to a hospital operated by a religious order" is not unconstitutional (*Tilton v. Richardson*, 403 U.S. 672, 679 (1971) (opinion of the Chief Justice, citing *Bradford v. Roberts*, 175 U.S. 291 (1899), but racial discrimination by a hospital so constructed is unconstitutional (*Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959, (4th Cir., 1963), *cert. denied* 376 U.S. 938 (1963). And in *Lemon v. Kurtzman*, 403 U.S. 602, 611. f.n. 5, 671, f.n. 2, the Chief Justice, speaking for the Court, and Mr. Justice White, both recognize that the considerations controlling in establishment of religion cases are quite distinct from those controlling in equal protection cases.[29]

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[29] "[I]f the evidence in any of these cases showed that any of the involved schools restricted entry on racial or religious grounds . . . the legislation would to that extent be unconstitutional." *Lemon, supra*, 403 U.S. at 671, f.n. 2.

Board of Education v. Allen, supra, 392 U.S. at 245 and cognate Establishment Clause cases proceed from the premise that "religious schools pursue two goals, religious instruction and secular education," and that the State may assist the second so long as it does not thereby become entangled in the first. The function of the "entanglement" doctrine and the aid "to student vs. school" distinction is to identify the line between the two missions of a parochial school, and to keep the state on the permissible side—the secular side—of the line. But education and segregation are inextricably interwoven in a school restricted to whites; and there can be no permissible role for the State in such a school. "Entanglement" doctrines and aid to "student vs. school" distinctions are therefore meaningless in an Equal Protection Clause context—as a comparison of *Allen, supra,* and *Lemon, supra,* makes clear. The Court distinguished textbooks from teachers in those First Amendment cases primarily because a textbook could be confined to its secular role but a teacher could not. A similar distinction for Equal Protection purposes would be inconceivable: state-paid teachers and state-paid textbooks reserved for whites in a school that excludes blacks *both* violate the Equal Protection Clause *if either does.* The rules for First Amendment cases, therefore, cannot rationally be mirrored in racial segregation cases; the issues are, very simply, noncomparable.

The First Amendment is designed to protect religion: it recognizes the value of religion, as nothing in the Constitution recognizes any value in racial discrimination. Under the First Amendment, the State may no more forbid parochial schools than it may establish them; and its denial of generally available benefits to parochial school students because they attend parochial schools

would at least trench upon, if it would not invade, Free Exercise concerns. *Cf. Sherbert v. Verner*, 374 U.S. 398 (1963). This consideration no doubt informs both the reference in *Allen* (392 U.S., at 245-47) to *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Allen*'s conclusion that the "line between state neutrality to religion and state support of religion is not easy to locate" (392 U.S. at 242).

However, while the State must tolerate religious instruction in private educational institutions, it need not tolerate racial discrimination by them (*cf. Allen, supra*, 392 U.S. at 247); and a segregated school—especially one providing whites with an alternative to public integrated schools—unlike a religious school, can invoke no legitimate interest that the State may even acknowledge. Moreover, religious schools may well perform, "in addition to their sectarian function, the task of secular education," (*Allen, supra*, 392 U.S. at 248), and thereby "serve a 'public purpose'." But schools which exclude blacks and provide a segregationist alternative to public schools serve no public purpose that the Equal Protection Clause allows; and an underwriting of any part of their segregated educational function by the State is constitutionally forbidden.

In short, the court below was plainly wrong in holding that the present case could be resolved by reference to *Allen* and First Amendment principles.

CONCLUSION

For the foregoing reasons the opinion and judgment of the court below should be reversed and the case remanded with instructions to enter an order enjoining appellees from distributing textbooks to the private segregated academies of Mississippi.

Respectfully submitted,

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APPENDIX A*

PRIVATE NON-SECTARIAN ACADEMIES PARTICIPATING IN STATE'S TEXTBOOK PROGRAM[1] 1970-71

Name of School[2]	Number of Books	Cost to State	Number of Students[3]
1. Adams County Christian	3,452	$ 8,918.07	535
2. Adams County Private	2,513	8,327.34	1,006
3. Amite School Corporation	3,950	11,875.26	581
4. Bearss Academy	417	1,146.18	117
5. Beeson, J.A. Academy	1,531	4,229.04	265
6. Benton Academy	3,148	8,432.85	421
7. Bentonia Academy	874	1,951.35	82
8. Brandon Academy	3,912	11,447.46	589
9. Brookhaven Academy	2,675	6,457.74	307
10. Calhoun Academy	294	655.14	127
11. Canton Academy	8,437	25,506.60	1,225
12. Carroll Academy	358	1,084.83	305
13. Central Academy	1,858	5,329.29	751
14. Central Delta Academy	1,933	4,878.66	216
15. Central Holmes	3,861	12,787.11	501
16. Centreville Academy	3,750	10,295.55	407
17. Chamberlain Hunt Academy	829	3,398.82	360
18. Chickasaw Academy	1,420	3,586.17	164
19. Children's Academy (The)	726	2,588.70	148
20. Christ Episcopal Day School	2,075	5,218.28	265
21. Citizens School	1,776	4,589.91	255
22. Claiborne Educational Foundation	2,032	4,792.38	253
23. Clarke Academy	387	1,478.04	340
24. Clarksdale Baptist	2,356	5,937.45	427
25. College Hill Academy	513	1,701.51	199
26. Columbia Academy	1,514	4,914.35	379
27. Copiah Academy	2,472	7,312.20	483
28. Covington School Foundation	512	1,494.36	75
29. Cruger-Tchula Academy	2,299	7,712.64	438
30. Deer Creek School	1,821	5,126.76	496
31. East Holmes Academy	2,776	7,791.60	619
32. East Lowndes Academy	1,745	5,056.02	247
33. East Rankin Academy	1,341	3,149.16	180
34. First Baptist Parochial	630	1,499.64	78
35. First United Methodist	1,305	3,029.25	169
36. Flowood Academy	443	1,251.93	227
37. Four County Academy	815	1,905.90	76
38. Gospel Lighthouse Crhistian	119	472.95	22
39. Gray Academy	1,320	3,932.43	177

*This Appendix is identical to Appendix "D" of the Jurisdictional Statement except that schools have been arranged in alphabetical order.

[1]This Appendix derives entirely from compilation filed by appellees in the District Court (entered by order of District Court, August 9, 1971). (A. 32-37)

[2]The District Court found that all of the "church schools" recorded herein are essentially non-sectarian and were formed in response to the desegregation of public schools.

[3]All students (and all faculty members) are white except for "15 Chinese, 16 Oriental, 2 Indians and 2 Latin American" students.

40. Greenwood Private Jr. High	1,160	4,288.95	330
41. Grenada Lake Academy	2,523	7,119.58	381
42. Happy Day School	652	884.73	110
43. Heidelberg Baptist Academy	1,993	5,557.50	295
44. Heritage Academy	1,593	4,029.81	350
45. Highway Baptist School	1,304	2,839.83	104
46. Hillcrest Academy	547	1,495.26	165
47. Humphreys Academy	3,480	10,000.71	398
48. Indianola Academy	7,985	24,029.01	1,209
49. Jackson Academy	3,071	6,652.56	575
50. Jefferson Davis Academy	1,054	3,701.10	356
51. Jesus Name Faith	85	170.70	44
52. Kemper Academy	3,849	10,654.85	432
53. Kirk Academy	842	3,061.74	639
54. Lawrence County Academy	717	2,149.32	177
55. Leake Academy	2,369	6,809.19	500
56. Live Oak Academy	218	822.21	412
57. M & L Academy	844	2,013.18	42
58. Magnolia Heights	1,930	5,674.80	228
59. Madison-Ridgeland Academy	448	1,151.01	136
60. Manchester Academy	1,004	2,356.92	550
61. Marshall Academy	1,153	3,012.36	600
62. Montgomery Carroll Academy	699	1,629.49	174
63. Mount Pleasant Christian Academy	1,254	3,498.30	149
64. Newton County Academy	887	2,046.92	78
65. North Central Miss. Schools	723	1,602.87	67
66. North Delta Schools, Inc.	1,021	3,373.19	268
67. North Miss. Academy	442	1,230.96	95
68. North Sunflower Academy	2,243	7,841.28	626
69. Northwest Academy	1,613	4,347.15	239
70. Oak Hill Academy	2,348	6,739.17	450
71. Paynes Academy	1,288	3,635.73	96
72. Parklane Academy	1,539	3,887.01	228
73. Pearl River Academy	660	1,209.06	104
74. Pheba Academy	675	1,636.14	133
75. Pillow Academy	2,453	7,802.87	1,189
76. Pine Hills Academy	1,839	5,194.44	328
77. Pines Academy	156	404.82	44
78. Pioneer Academy	438	922.65	45
79. Prentiss Christian Schools	779	1,975.95	180
80. Presbyterian Day School	264	576.45	135
81. Presbyterian Day School	1,247	2,323.11	141
82. Quitman County Educational Foundation	727	3,008.91	480
83. Rankin Academy	1,510	5,302.47	284
84. Saint George Episcopal	1,340	2,885.54	169
85. Saint John's Day School	1,130	2,465.85	184
86. SanFord Academy	787	2,277.54	136
87. Scott County Christian	2,235	6,325.58	320
88. Sharkey-Issaquena Academy	1,051	3,815.35	664
89. Shaw Educational Foundation	1,480	4,443.00	905
90. Simpson Academy	1,266	3,427.89	270
91. Southwest Academy	1,167	2,649.12	131
92. Southwest Christian Academy	564	1,689.09	361
93. Starkville Academy	3,229	9,562.77	553
94. Sylvarena Baptist Academy	1,671	4,255.77	236
95. Terry Academy	1,378	3,884.61	157
96. Tri-County Academy	1,217	4,327.71	438
97. Tunica Institute	2,189	6,851.52	495
98. Union Private	1,578	4,526.16	202
99. Walnut Hills School	317	816.42	114

100. Wayne County School Foundation	814	2,064.21	103
101. West Marion Academy	2,073	6,336.78	383
102. Westminister Academy	252	773.86	132
103. West Panola School	1,143	3,134.67	203
104. West Tallahatchie Academy	666	1,856.85	178
105. Wilkinson County Christian	4,002	11,359.74	404
106. Winston Academy	1,781	5,036.76	288
107. Woodland Hills Baptist Academy	2,279	5,598.42	428
TOTALS	173,424	$490,292.39	34,532

APPENDIX B [1]

STATEWIDE ENROLLMENTS

	Private Non-Sectarian				Public	
	Total Enrollment	Change	No. of Schools	No. of Schools Opened for First Time		Change
1963-64	2,362		17[3]		570,000	
1964-65	2,408	+ 46	21	4	576,000	+ 6,000
1965-66	3,841	+ 1,433	41	20	583,000	+ 7,000
1966-67	5,452	+ 1,611	49	8	582,500	- 500
1967-68	6,546	+ 1,094	58	9	582,500	—
1968-69	9,064	+ 2,518	69	11	581,500	- 1,000
1969-70	30,939	+21,875	124	55	550,500	-31,000
Sept. 1970	42,000[2]	+11,061	155	31	534,500	-16,000

[1] This Appendix derives entirely from an exhibit offered and received into evidence by supplemental order of District Court.

[2] Estimate based on stipulation; the exact figure lies somewhere between 41,000 and 43,000.

[3] See page 9, f.n. 7, of this brief for a further breakdown of 1963-64 enrollment statistics.